

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: Harry F. Smithers, Kelliann Smithers Debtor Anna McCloskey Co-Debtor SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the LB- Cabana Series IV Trust v. Harry F. Smithers, Kelliann Smithers Anna McCloskey Kenneth E. West - Bankruptcy Trustee Respondents	CASE NO.: 23-10624-amc CHAPTER 13 Judge: Ashely M. Chan Hearing Date: September 26, 2023 at 11:00 AM Objection Deadline: September 11, 2023
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**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AND CO-DEBTOR STAY**

SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the LB-Cabana Series IV Trust (on behalf of itself and together with any successor and/or assign, “Movant”) hereby moves this Court for an Order (i) pursuant to 11 U.S.C. § 362 (d)(1); vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtor’s premises located at 2856 Nautilus Rd, Philadelphia, PA 19154; vacating the co-debtor stay in effect pursuant to 11 U.S.C. § 1301(a) and (ii) for such other and further relief as is just and proper. In support of this Motion, Movant respectfully states:

1. Movant is the holder of a Note executed by Anna McCloskey dated August 2, 2006, whereby the Debtor promised to repay \$191,421.15 plus interest to Wachovia Bank, National Association (the “Original Lender”). To secure the repayment of the Note, Anna McCloskey executed a Mortgage in favor of Wachovia Bank, National Association, encumbering the Property commonly known as 2856 Nautilus Rd, Philadelphia, PA 19154, which Mortgage was recorded in the Official records of Philadelphia County at Document ID 5158433 (hereinafter “Mortgage”). Non-Filing Co-Debtor Anna McCloskey entered into a Loan Modification Agreement with prior servicer Wells Fargo Bank NA, effective February 24, 2011 that created a new principal balance of \$183,459.80. The Mortgage was ultimately assigned to Movant by an Assignment of Mortgage. A copy of the Note, Mortgage and Assignments of Mortgage are attached hereto as **Exhibit A**.

2. The Petition under Chapter 13 of the United States Bankruptcy Code was filed by the Debtors Harry F. Smithers and Kelliann Smithers on March 3, 2023.

3. This Court has jurisdiction over this case and this motion pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue of this case and this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Debtor has failed to make current mortgage payments due under the terms of the Loan. As a result, the Loan remains post-petition due for April 1, 2023, and each subsequent payment thereafter.

6. Pursuant to 11 U.S.C. § 362(d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

7. Specifically, courts have found cause for the granting of relief from an automatic

stay where the debtor has failed to make post-petition mortgage payments as they become due. *In Re Taylor*, 151 B.R. 646, 648 (Bankr. E.D.N.Y. 1993).

8. Movant will be irreparably injured by continuation of the co-debtor stay imposed under 11 U.S.C. § 1301(a) absent payments from the Debtor and/or Co-Debtor. As such, the co-debtor stay should be lifted pursuant to 11 U.S.C. § 1301(c)(3), and Movant should be permitted to proceed against the Co-Debtor.

9. Accordingly, grounds exist to vacate the stay in Debtor's case and Movant therefore requests that the co-debtor stay imposed under 11 U.S.C. § 1301(a) of the Bankruptcy Code be modified and terminated for cause to permit Movant to pursue its rights against the Co-Debtor under the Mortgage and applicable law, including without limitation, the commencement and consummation of a foreclosure action and/or eviction proceeding.

10. Movant respectfully requests reasonable attorney fees in the amount of \$1,050.00 and costs in the amount of \$188.00.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay and for such other, further and additional relief as to this Court may deem just, proper and equitable.

Dated: August 28, 2023

By: /s/ Lauren Moyer

Lauren Moyer, Esq.

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for U.S. Bank Trust National Association, as

Trustee of the LB-Cabana Series IV Trust

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: Harry F. Smithers, Kelliann Smithers
Debtor
Anna McCloskey
Co-Debtor
SN Servicing Corporation as servicer
for U.S. Bank Trust National
Association, as Trustee of the LB-
Cabana Series IV Trust
v.
Harry F. Smithers, Kelliann Smithers
Anna McCloskey
Kenneth E. West - Bankruptcy Trustee
Respondents

CASE NO.: 23-10624-amc

CHAPTER 13

Judge: Ashely M. Chan

Hearing Date:

September 26, 2023 at 11:00 AM

Objection Deadline:

September 11, 2023

**DECLARATION IN SUPPORT OF MOTION
FOR RELIEF FROM THE AUTOMATIC STAY AND CO-DEBTOR STAY**

I, Ashely M. Chan certify the following to be true under penalty of perjury:

1. I am employed as a SAC Debt Manager for SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the LB-Cabana Series IV Trust (the "Movant") and am authorized to execute this declaration on behalf of Movant. This declaration is offered in support of the Motion for Relief from the Automatic Stay annexed hereto.

2. In my capacity as SAC Debt Manager have access to Movant's business records, including the business records for and relating to the loan of the Debtors, Harry F. Smithers, and Kelliann Smithers, secured by the real property known as 2856 Nautilus Rd, Philadelphia, PA 19154 (the "Property"). The facts stated in this declaration are based upon information that I have obtained by reviewing records maintained in the ordinary course of business, as part of regularly conducted business activity, by or from information transmitted by person(s) with knowledge of the events described therein, at or near the time of the event described.

3. According to business records, Anna McCloskey executed and delivered a Note

dated August 2, 2006, in favor of Wachovia Bank, National Association (the "Original Lender"), in the original principal amount of \$191,421.15. The Note is secured by a Mortgage executed and delivered by Anna McCloskey to Original Lender.

4. As of August 31, 2023, the total obligations to Movant less any partial payment and suspense balance is \$184,591.51.

5. As of August 31, 2023, the Debtor is post-petition due for April 1, 2023. The post-petition default is broken down as follows:

<u>Monthly payments due</u>	<u>Amount</u>
April 1, 2023 through August 1, 2023 (5 monthly payments of \$813.86 each month)	\$4,069.30
Filing Cost for Motion for Relief	\$188.00
Attorney's fees for Motion for Relief	\$1,050.00
TOTAL	\$5,307.30

Post-Petition Payment Breakdown

6. The total amount of post-petition arrearage/delinquency is \$5,307.30. The next post-petition payment will become due on September 1, 2023 in the amount of \$813.86.

7. I hereby certify, under penalty of perjury, that the foregoing is true and correct.

Executed this 23 day of August, 2023


Signature

Christopher V. Bickel
Name

VK Account Manager
Title